

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *bmu* D.C.

OCT 24 PM 5:40

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE

THOMAS & BETTS CORP.,)
)
 Plaintiff/Counter-Defendant,)
)
 v.)
)
 HOSEA PROJECT MOVERS, LLC,)
)
 Defendant/Counter-Plaintiff.)
)

No. 02-2953 Ma/A

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

On October 19, 2005, this court issued an order granting partial summary judgment to Plaintiff Thomas & Betts Corp. ("Thomas & Betts"). Defendant Hosea Project Movers, LLC, ("Hosea") filed a motion for reconsideration of this order on October 24, 2005. For the following reasons, Hosea's motion is DENIED.

Rule 59(e) affords a plaintiff relief from a judgment under limited circumstances:

First, the movant may demonstrate that the motion is necessary to correct manifest errors of law or fact upon which the judgment is based. Second, the motion may be granted so that the moving party may present newly discovered or previously unavailable evidence. Third, the motion will be granted if necessary to prevent manifest injustice Fourth, a Rule 59(e) motion may be justified by an intervening change in controlling law.

The Rule 59(e) motion may not be used to relitigate old

matters, or to raise arguments, or present evidence that could have been raised prior to the entry of judgment. Also, amendment of the judgment will be denied if it would serve no useful purpose.

11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1 (2d ed. 1995) (footnotes omitted); see GenCorp, Inc. v. Am. Int'l Underwriters, 178 F.3d 804, 834 (6th Cir. 1999) (noting that Rule 59(e) motions may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice). The court should use its "informed discretion" in deciding whether to grant or deny a Rule 59(e) motion. See Huff v. Metro. Life Ins. Co., 675 F.2d 119, 122 (6th Cir. 1982).

Hosea requests relief from the court's grant of partial summary judgment on the grounds of manifest error of fact. In its order, the court found that Hosea had breached its contract with Thomas & Betts by failing to provide insurance coverage in Mexico as well as the United States. Until filing its motion for reconsideration, Hosea has never disputed Thomas & Betts' claim that it did not provide insurance coverage in Mexico. Instead, Hosea has argued that it did not breach the contract because the contract did not require that insurance coverage extend beyond the borders of the United States.

Now, one day before the trial is set to begin, Hosea for the first time claims that it did not breach the agreement because the coverage that it purchased did in fact extend to Mexico. This

argument is not based on evidence or law not available to Hosea prior to the court's October 19 order. It could and should have been made in Hosea's initial response to Thomas & Betts motion for summary judgment or in its response to Thomas & Betts motion for reconsideration. Therefore, Hosea's motion for reconsideration is DENIED.

So ordered this 24th day of October 2005.

A handwritten signature in black ink, appearing to read 'S. H. Mays, Jr.', written over a horizontal line.

SAMUEL H. MAYS, JR.

UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 222 in case 2:02-CV-02953 was distributed by fax, mail, or direct printing on October 25, 2005 to the parties listed.

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Honorable Samuel Mays
US DISTRICT COURT